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Commonwealth of Virginia

RESPONSE TO PETITION FOR RULEMAKING

Check one: ☐ Initial Agency Notice ☒ Agency Decision

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Agency Name: State Mental Health, Mental Retardation and Substance Abuse Services Board

Chapters affected:

VAC No. (e.g., 4 VAC 20-490):	Chapter Name (e.g., Regulations Pertaining to Sharks):
12VAC35-115	Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers of Mental Health, Mental Retardation and Substance Abuse Services

Statutory Authority: §§ 37.2-203 and 37.2-400

Name of petitioner: Steven Shoon

Nature of petitioner's request: Requests that the agency adopt regulations allowing individuals to be present in closed meetings when they are the subject of the meeting. These closed meetings are invoked under certain conditions under §2.2-3711 of the Code and include meetings to discuss or consider medical and mental records, and, personal matters unrelated to public business for privacy protection. The proposed regulatory provisions should be codified at 12VAC35-115-70.

Requests that the agency amend 12VAC35-115-40 to require state facilities to physically post, in a conspicuous place, basic information about the Virginia Freedom of Information Act (VFOIA). This basic information is prescribed in §2.2-3704.1 of the Code. The statute requires state public bodies to post certain information on the internet. This information includes, (i) the rights granted to individuals under VFOIA; (ii) the process for requesting records; (iii) the obligations imposed on state employees by VFOIA; (iv) contact information for receiving assistance and making requests for public records; and (v) commonly used exemptions for VFOIA requests.

INITIAL AGENCY NOTICE

Agency's plan for disposition of the request: The Board will consider the petition and any comments received at its regularly scheduled meeting on January 18, 2006.

Comments may be submitted until November 21, 2005

AGENCY DECISION

☐ Request Granted

☒ Request Denied

Statement of reasons for decision: The State Mental Health, Mental Retardation and Substance Abuse Services Board has denied the petition but has agreed to consider the petitioner's proposal in conjunction with its current process for amending its human rights regulations (12 VAC 35-115-10 et seq.). The petitioner requested that the Board initiate a new process to adopt regulations pertaining to the rights of individuals who are receiving services in state facilities. Virginia Code § 37.2-400 requires the Board to adopt regulations to protect the legal and human rights of individuals receiving services in facilities or from providers that are licensed, funded, or operated, by the department. The Board recently published a notice of intended regulatory action (NOIRA) to initiate the process to amend its human rights regulations. As part of this process, the Board will publish its proposed amendments and provide the public the opportunity to submit comments for its consideration. Rather than initiate a new regulatory process, the Board agreed to regard the petitioner's specific request as public comment on its proposed human rights regulations and consider his proposal when finalizing its amendments to the human rights regulations.

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